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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/029,329

12/21/2001

Jonathan N. Howarth

SU-7222-B

4386

7590

04/13/2004

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/029,329

Applicant(s)

HOWARTH, JONATHAN N.

Examiner

Carolyn A Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 29-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date various: 12-2-02, 11-7-02, 3-12-02
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Applicant's election with traverse of Group II in Paper No. 2-2-2004 is acknowledged. The traversal is on the ground(s) that a search of all of the claims would not be a serious burden to the examiner and that the restriction requirement is not a mandatory step in the process. This is not found persuasive. A search for a disinfectant for equipment or water would not require the same search as the search for a disinfectant for poultry flesh. The extensive list of related cases also complicates the search in Group I.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins (6,605,253) in view of Auchincloss (4,822,512).

Perkins discloses intervention techniques for reducing poultry carcass contamination. The main thrust of his approach is to add a disinfectant to the process water (see abstract and figure 1). Claim 1 appears to differ from the reference in the recitation of the use of the particular biocide of the

claim. Auchincloss teaches that a biocidal composition containing sulfuric acid (column 7, lines 5-11) has biocidal activity against E. Coli (column 5, lines 40-50) and further is non-corrosive, does not irritate the skin and is can be consumed (column 7, lines 45-57). With the references before him, one of ordinary skill in the art would have been led to the slufamic acid composition of Auchincloss as a substitute biocidal agent in the poultry process of Perkins because of the improved qualities of the treatment solution. Even though "sulfamate anion" is not specifically mentioned in the reference, one of ordinary skill in the art would have expected sulfamate to present dissolved composition because of the pH and salt content of the solution.

Claims 29-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill (4,770,884) in view of Padilla (1,139,188). Hill discloses intervention techniques for reducing poultry carcass contamination. The main thrust of his approach is to add a disinfectant to the scald tank, picker and chiller (see column 2, lines 40-52). Claim 1 appears to differ from the reference in the recitation of the use of the particular biocide of the claim. Padilla teaches that the hydantion of the claims is a germicidal agent. It is well known in the art that livestock

animals carry all of their germs to and through processing. It is also well known in the art that minimizing the bacterial load on a live meat animal would also create a meat item that might be safer to eat. In examples VII, VIII and X, the hydantion was shown to reduce the amount of three important food-borne microorganisms in a test tube. One of ordinary skill in the art would have been aware of the microorganisms that are important to contain in the poultry industry from the numerous television and public health announcements on food borne illness. In fact without this knowledge, one would probably not be permitted to practice commercial livestock processing. Thus with the reference before him, it would have been obvious to one having ordinary skill in the art to substitute the germicidal agent of Padilla for the sulfomate in Hill in order to be able to control the germs found in poultry that is destined for slaughter.

Claims 29-40 are rejected under 35 U.S.C. 103(a) as being obvious over Howarth (6,565,868) or Moore (6,652,889) in view of Perkins (6,605,253).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection

under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Howarth (6,565,868) discloses microbiological control in aqueous systems. The hydantoin compound, which is the same compound set forth in claim 29 in the present application, is added to water in order to combat

pathogens, such as E. coli (see abstract). The claims appear to differ from the reference in the suggestion of the use of the composition in a poultry processing operation. Common sense would suggest that potable water is essential to any industrial process that involves food and sanitation is critical to providing quality meat from any poultry operation. Further Perkins discloses intervention techniques for reducing poultry carcass contamination. The main thrust of his approach is to add a disinfectant to the process water (see abstract and figure 1). Thus it would have been obvious to one of ordinary skill in the art to utilize the sanitized water of Howarth in the process of Perkins in order to enhance the overall sanitary quality of the poultry slaughtering process.

Moore (6,652,889) discloses microbiological control in aqueous systems. The active bromine compound is added to water to control the outgrowth of pathogens in aqueous systems. The claims appear to differ from the reference in the suggestion of the use of the composition in a poultry processing operation. Common sense would suggest that potable water is essential to any industrial process that involves food and sanitation is critical to providing quality meat from any poultry operation. Further

Perkins discloses intervention techniques for reducing poultry carcass contamination. The main thrust of his approach is to add a disinfectant to the process water (see abstract and figure 1). Thus it would have been obvious to one of ordinary skill in the art to utilize the sanitized water of Howarth in the process of Perkins in order to enhance the overall sanitary quality of the poultry slaughtering process.

Claims 29-40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-20 of U.S. Patent No. 6,652,889 in view of Perkins (6,605,253).

Moore (6,652,889) discloses microbiological control in aqueous systems. The active bromine compound is added to water to control the outgrowth of pathogens in aqueous systems. The claims appear to differ from the reference in the suggestion of the use of the composition in a poultry processing operation. Common sense would suggest that potable water is essential to any industrial process that involves food and sanitation is critical to providing quality meat from any poultry operation. Further Perkins discloses intervention techniques for reducing poultry carcass contamination. The main thrust of his approach is to add a disinfectant to the process water (see abstract and figure 1). Thus it would have been



obvious to one of ordinary skill in the art to utilize the sanitized water of Howarth in the process of Perkins in order to enhance the overall sanitary quality of the poultry slaughtering process.

Claims 29-40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 23-34 of U.S. Patent No. 6,565,868 in view of Perkins.

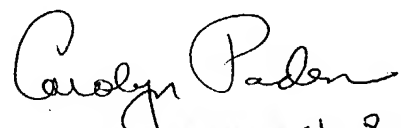
Howarth (6,565,868) discloses microbiological control in aqueous systems. The hydantoin compound, which is the same compound set forth in claim 29 in the present application, is added to water in order to combat pathogens, such as *E. coli* (see abstract). The claims appear to differ from the reference in the suggestion of the use of the composition in a poultry processing operation. Common sense would suggest that potable water is essential to any industrial process that involves food and sanitation is critical to providing quality meat from any poultry operation. Further Perkins discloses intervention techniques for reducing poultry carcass contamination. The main thrust of his approach is to add a disinfectant to the process water (see abstract and figure 1). Thus it would have been obvious to one of ordinary skill in the art to utilize the sanitized water of

Howarth in the process of Perkins in order to enhance the overall sanitary quality of the poultry slaughtering process.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CAROLYN PADEN 4-8-04  
PRIMARY EXAMINER  
GROUP 1360 1761